

**UNITED STATE BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

In Re:

BRENT A. HARVEY and
MARCI A. HARVEY,

Debtor(s).

Chapter 13
Case No. 11-11-60154-pjs
Hon. Phillip J. Shefferly

BRENT A. HARVEY and
MARCI A. HARVEY,

Plaintiff(s),

v.

Adv. Pro. No. 11-_____-pjs

BANK OF AMERICA, N.A.,
a National Banking Association,

Defendant(s),

COMPLAINT TO DETERMINE EXTENT OF LIEN

NOW COMES Plaintiffs, Brent A. and Marci A. Harvey, by and through their counsel, David R. Shook, Attorney at Law, PLLC, and for their Complaint to Determine Extent of Lien, says as follows:

1. This adversary proceeding is brought to pursuant to *F.R.B.P. 7001(2)*.
2. This Court has jurisdiction over this matter pursuant to 28 *U.S.C. 157* and *1334(a)*.
3. This matter is a core proceeding as defined by 28 *U.S.C. §157(b)(2)(A), (B)(K), and (o)*.
4. The venue is proper in this jurisdiction pursuant to 28 *U.S.C. §1409(a)*.
5. Bank of America, N.A., (“BOA”), is a National Banking Association. The Defendant is doing business in the State of Michigan and subject to the jurisdiction of this Court.
6. Service for BOA can be made via its President and General Counsel, Brian Moynihan, 100 North Tryon St., Charlotte, NC 28255.
7. On or about July 26, 2011, Brent A. and Marci A. Harvey (“the Plaintiff”), filed a voluntary petition for relief pursuant to Chapter 13 of Title 11 of the United States Bankruptcy Code (“the Code”).
8. Plaintiffs own real property located at 5084 Timber Ridge Trail, Clarkston, Michigan 48346, herein after referred to as the “real property”. Plaintiffs have included the property on their Schedule A as having a value in the amount of \$120,000.00.

9. The real property is subject to the claim of Citi Mortgage, arising out of a mortgage in the amount of \$167,000.00, originally to ABN AMRO Mortgage Group, Inc., dated February 4, 2004, recorded on May 5, 2004, at Liber 32963 Page 99 Register of Deeds Oakland County, Michigan (*see Exhibit 1*).

10. Although a Proof of Claim has not been filed the regarding the first mortgage Defendant has scheduled the claim as having a balance of \$156,355.35.

11. The real property is also subject to a second lien arising out of a second mortgage in favor of Defendant, originally to ABN AMRO Mortgage Group, Inc., in the amount of \$31,540.00, dated February 4, 2004, and recorded May 5, 2004 at Liber 32962 Page 877 Oakland County Register of Deeds (*see Exhibit 2*).

12. Based on the title of the document and internet note, it is clear Debtor and Defendant intended the mortgage listed as Exhibit 2, to be second in time.

13. BOA has failed to file a Proof of Claim however, Defendant has scheduled the claim at \$52,432.17.

14. Pursuant to *Section 1322*, a wholly unsecured lien may be stripped from the Debtor's real property.

15. Based on the Debtor's Schedules, the Defendant's claim is unsecured (value of the real property equals \$120,000.00 less the first mortgage in the amount of \$156,355.35 equals negative equity in the amount of \$36,355.35).

WHEREFORE, the Plaintiffs, Brent A. and Marci A. Harvey, respectfully requests this Honorable Court to:

1. Determine the value of the real property is insufficient to support the Defendant's, secured claim;
2. Order the Defendant to release the mortgage secured by the its mortgage and deliver a release to the attorney for Plaintiff's within fourteen (14) days;
3. Direct the Trustee that the Defendant's Proof of Claim for its mortgage to be treated as an unsecured claim under the Chapter 13 Plan.

Respectfully submitted,
David R. Shook, Attorney for Plaintiffs/Debtors,

Dated: August 18, 2011

/s/ David R. Shook
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